

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

**In Re: PHARMACEUTICAL  
INDUSTRY AVERAGE WHOLESALE  
PRICE LITIGATION**

) MDL No. 1456

) Master File No. 01-12257-PBS

) Subcategory Case. No. 06-11337

**THIS DOCUMENT RELATES TO:**

) Hon. Patti B. Saris

*U.S. ex rel. Ven-A-Care of the Florida Keys,*

) Magistrate Judge

*Inc. v. Dey Inc., et al.*

) Marianne B. Bowler

Civil Action No. 05-11084-PBS

**DEFENDANTS DEY, INC., DEY, L.P., AND DEY L.P., INC.'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56, Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. (collectively, "Dey") respectfully move this Court for an order dismissing, in part, claims asserted against them by the United States and Relator Ven-A-Care of the Florida Keys, Inc. in the United States' First Amended Complaint. The grounds for this motion are set forth in the Memorandum of Law in Support of Dey's Motion for Partial Summary Judgment.

In support of its motion, Dey submits herewith and/or relies upon: (i) the Memorandum of Law in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Motion for Partial Summary Judgment; (ii) the Concise Statement of Undisputed Material Facts in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Motion for Partial Summary Judgment; (iii) the Affidavit of Pamela R. Marrs in Support of Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Motion for Partial Summary Judgment, sworn to on June 25, 2009; (iv) the Declaration of Lauren Stiroh, Ph.D. in Support of Dey's Motion for Partial Summary Judgment, dated June 25, 2009; (v) the Declaration of W. David Bradford, Ph.D. in Support of Dey, Inc., Dey, L.P., and Dey, L.P. Inc.'s Motion for Partial Summary Judgment, dated June 26, 2009; and (vi) the Declaration of Sarah L. Reid in Support of Dey, Inc., Dey, L.P., and Dey L.P., Inc.'s Motion for Partial Summary Judgment, dated June 26, 2009, and the exhibits annexed thereto.

Pursuant to Local Rule 7.1(a)(2), counsel for Dey has conferred with counsel for the United States in a good faith effort to resolve or narrow the issues set forth herein, but has been unable to reach an agreement.

WHEREFORE, for the reasons set forth in the memorandum described above and the other documents described above referenced therein, Defendants Dey, Inc., Dey, L.P., and Dey L.P., Inc. respectfully request that the Court grant its motion for partial summary judgment and enter an Order dismissing on the merits, in part, the claims asserted against them in the United States' First Amended Complaint, and providing other and further relief as the Court deems just and proper.

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1, Dey believes that oral argument may assist the Court in resolving the issues presented in this motion and respectfully requests that oral argument be heard.

Dated: June 26, 2009

Respectfully Submitted,

KELLEY DRYE & WARREN LLP

By: /s/Sarah L. Reid  
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*Attorneys for Defendants Dey, Inc.  
Dey, L.P., and Dey, L.P., Inc.*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by causing to be sent, on June 26, 2009, a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Sarah L. Reid

Sarah L. Reid